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Before the
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Policies and Rules concerning)
Toll Fraud)

CC Docket No. 93-292

REPLY COMMENTS OF U.S. INTELCO NETWORKS, INC.

INTRODUCTION

U.S. Intelco Networks, Inc. ("USIN"), on behalf of itself and its Independent Telephone Company ("ITC" or "Independent") owners and users and pursuant to Sections 1.415 and 1.419 of the Commission's Rules,¹ respectfully submits the following Reply Comments in response to the Notice of Proposed Rule Making ("NPRM") released herein on December 2, 1993, and in response to the Comments filed in this Docket on January 14, 1994. USIN's primary objective in offering these replies is to assist the Commission in developing policies which reduce the instance of toll fraud on the national communications network. In particular, USIN desires to emphasize the need to focus on fraud prevention as an overall goal, rather than developing rules to allocate the costs of fraud.

As it noted in its original comments, USIN is wholly owned by 282 Independents and

¹ 47 C.F.R. §§ 1.415 and 1.419.

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provides customer database services, calling card billing validation services, 800 RESPORG services, revenue administration services and other related database services to over 1000 Independent LECs nationwide. USIN also assists Independents in the provisioning of calling cards to Independent customers. Accordingly, USIN has an active and significant interest in the minimization of toll fraud on the nation's telecommunications networks.

As with its initial comments, USIN's reply comments address issues regarding LIDB and calling card-based fraud. These reply comments raise four specific issues in response to the comments presented thus far:

- The FCC's rulemaking must focus on fraud prevention, rather than formulating specific rules for allocating liability. Market forces are sufficient to allow parties to allocate liability in an efficient manner;
- The FCC's Toll Fraud proceeding must recognize the need to keep fraud prevention techniques confidential, the phenomenon of fraud migration, and the need to address fraud on the network as a whole;
- The record reflects no meaningful argument against IXC provision of originating and terminating number; there is no need to accompany the provision of this information with increased liability for LECs and LIDB providers, who have ample incentives to utilize this information in helping to reduce fraud on IXC networks;
- Moreover, the FCC should reject proposals to require LECs and LIDB providers to compensate IXCs for the provision of originating and terminating number by indemnifying IXCs from fraud when the IXC utilizes the LIDB and receives a "valid" response - a "valid" LIDB response cannot be a guarantee against all types of fraud.

DISCUSSION

I. The FCC Should Focus on Fraud Prevention, Rather than Developing Rules for Allocating Liability.

As USIN noted in its initial comments, the NPRM correctly indicated that the

Commission's priority should be to promote closer coordination within the industry to aid in the detection and prevention of fraud.² Unfortunately, the Commission's decision to simultaneously attempt to formulate rules to allocate the costs of fraud among service providers has resulted in a record which overemphasizes discussions regarding who pays for fraud and thus reduces the extent to which this proceeding could promote closer industry coordination.

Additionally, the record supports the Commission's suspicion articulated in the NPRM, that it is difficult, if not impossible, to formulate rules which effectively address the differing facts and circumstances of individual toll fraud cases.³ For example, NTCA notes that it would be difficult to develop a general rule on assignment of liability because of the unpredictable variations in factual patterns.⁴

USIN believes that the Commission's attempt to formulate specific rules to allocate liability for toll fraud actually detracts from the Commission's goal by creating incentives for carriers to avoid liability, rather than reduce fraud. For example, USIN agrees with LinkUSA that the predetermination of liability reduces the incentive of any non-responsible party to do everything possible to combat toll fraud.⁵ USIN also agrees with the comments of NTCA, USTA, and others which indicate that the FCC should focus on facilitating industry coordination

² In the Matter of Policies and Rules Concerning Toll Fraud, CC Docket 93-292, Notice of Proposed Rulemaking, December 2, 1993, ("NPRM"), at para. 1.

³ NPRM, para. 39.

⁴ Comments of NTCA at 3; see also Comments of USTA at 1.

⁵ Comments of LinkUSA at 3; see also Comments of USTA at 1.

to foster fraud prevention, and allow private contracts and market forces to assign liability.⁵

USIN believes that the Commission's proposals may be based on a premise which is fundamentally mistaken - that is that fraud continues to flourish because of inadequate incentives on the part of LECs and other carriers to prevent fraud. USIN submits that, in fact, fraud continues to flourish because it represents an opportunity for profit. Until the perpetrators of toll fraud are investigated, caught, prosecuted, convicted, and given significant fines and/or jail sentences, fraud will continue to persist. Accordingly, USIN strongly agrees with those commenters who support increased law enforcement efforts against toll fraud.⁶

II. The Commission Should Treat Toll Fraud Issues in a Confidential and Comprehensive Manner

In its initial comments, USIN recognized that there is an inherent tension between the need for open notice and comment procedures and the need for the filings in this proceeding to receive confidential treatment, in order to avoid having the information gleaned from this proceeding inure to the benefit of fraud perpetrators.⁷ As few other commenters addressed this issue, USIN reiterates its concern that, in identifying specific fraud prevention mechanisms, the industry and the Commission may be inadvertently identifying ways for fraud perpetrators to "beat the system."

⁵ See, e.g., Comments of NTCA at 1-2; Comments of USTA at 1; Comments of Ameritech at 3-4.

⁶ See, e.g., Comments of SNET at 3; Comments of Ameritech at 2; Comments of AT&T at 37.

⁷ Comments of U.S. Intelco at 9.

USIN also agrees with those parties who recognize that toll fraud is migratory. As Bell Atlantic noted, "every time a service provider plugs one hole in the defense, a new one is opened."⁸ Accordingly, USIN believes that toll fraud prevention efforts should include all law enforcement agencies, government, and all segments of the industry. By recognizing the holistic nature of the toll fraud problem, all parties can work together to prevent fraud migration from undermining efforts to reduce fraud.

III. The Record Reflects No Meaningful Objection to Interexchange Carrier Provision of Originating and Terminating Number

USIN, and numerous other parties, noted that LIDB providers can provide additional fraud prevention functions if the toll provider transmitted to the LIDB the originating and terminating number ("O/T number") for the call with each query.⁹ No argument was presented which rebuts this conclusion. USIN agrees with NTCA that, as interstate toll carriers will directly benefit from the utilization of this information by LIDB providers, a Commission rule mandating such provision is not necessary.¹⁰

USIN also submits that no argument justifying permitting IXC's to charge for O/T number has been presented. As Sprint Long Distance noted, it intends to pass this information to the LIDB provider at no charge, on the theory that such information provides additional intelligence

⁸ Comments of Bell Atlantic at 1.

⁹ See, e.g., Comments of Southwestern Bell at 11; Comments of Pacific Bell and Nevada Bell at 16; Comments of Bell Atlantic at 8; Comments of Sprint at 18-19.

¹⁰ See Comments of NTCA at 3.

that is of value in detecting fraud.¹¹ The argument of ICIC-TFS that the economic benefits of IXC acceptance of LEC joint use cards warrants a charge for O/T number is without merit.¹² There is no method by which the Commission could ensure that the unquantifiable benefits to the LEC justify whatever charge is imposed by an IXC. Moreover, as USIN noted in its initial comments, additional expenses by the LECs would be reflected in the charges for LIDB service paid by the LIDB users, the same entities that provide the information.

Additionally, USIN notes with surprise the attempt by some IXCs to leverage the provision of this information into an increased allocation of liability for toll fraud to LIDB providers. Despite ample evidence to the contrary, certain interexchange carriers claim that there is no incentive for LIDB providers to utilize O/T number information to reduce fraud, and therefore if IXCs provide O/T number in a query, the LIDB provider should then become liable for fraudulent calls.¹³ USIN's response to these extreme proposals is more fully detailed in Section IV of its Replies, infra.

As USIN noted above, introducing allocation of liability issues into this proceeding detracts from the process of forging cooperative industry solutions to the toll fraud problem. It would be inordinately difficult for the Commission to formulate specific rules to assign

¹¹ Comments of Sprint at p. 19.

¹² Comments of the Interexchange Carrier Industry Committee - Toll Fraud Subcommittee (ICIC-TFS) at 15.

¹³ Comments of AT&T at 31; Comments of MCI at 14; see Comments of ICIC-TFS at 15, n.8.

liability for all cases. Moreover, rules to reallocate liability in this case are unnecessary, as LIDB providers already have adequate incentives to prevent fraud. Many of these incentives were mentioned in USIN's initial comments and in the comments of others. For example, GTE notes that it (like nearly all LEC LIDB providers) assumes 100 percent of the liability for losses associated with intraLATA toll fraud.¹⁴ The fact that the majority of fraudulent calls are not intraLATA calls in no way reduces the incentive for these carriers to prevent fraud on their own networks, as was claimed by ICIC-TFS.¹⁵ No carrier would find it cost-effective to ignore its own fraud protection simply because most fraudulent use occurs on another carrier's network. Additionally, most LIDB providers also issue LEC line-number based joint use calling cards, and thus have a strong interest in preventing fraudulent use of cards issued to their customers.¹⁶

IV. The FCC Should Reject Proposals to Require LECs to Make LIDB Validation a Guarantee of the Tariffed Charges for a Call

Some IXC commenters ask the Commission to require LECs, in exchange for the receipt of O/T number, to indemnify IXCs against the costs of fraud when the IXC sends the LIDB a query and a "valid" response is returned.¹⁷ Specifically, MCI states that "LECs should be made financially responsible for the IXC tariffed charges for fraudulent calls that are "approved"

¹⁴ Comments of GTE at 15.

¹⁵ See Comments of ICIC-TFS at 14.

¹⁶ See, e.g., Comments of US West at 24; Comments of Ameritech at 5; Comments of GTE at 16.

¹⁷ Comments of AT&T at 31; Comments of MCI at 14; see Comments of ICIC-TFS at 15, n.8.

by LIDB."¹⁹ These proposals should be rejected, for at least two reasons: 1) the return of a "valid" LIDB query does not prevent all types of fraud; 2) it would be inappropriate to assign the costs of liability to LIDB providers where no revenue stream presently exists to cover these costs.

Proposals to allocate such liability to LIDB providers erroneously presume that a properly administered LIDB can provide a foolproof method to prevent fraud. On the contrary, while the LIDB has certain functionalities which are being used aggressively to reduce fraud, the return of a "valid" LIDB query, even when advanced functionalities are utilized, does not guarantee that no fraud has occurred, or will occur.²⁰

For example, LIDB providers could be forced to reimburse any LIDB accessor for a fraudulent call handled by the LIDB accessor which was billed to a calling card number misappropriated by a "shoulder-surfer," and/or where the pattern of calls demonstrated no unusual usage levels or other characteristics identifiable by a LIDB.²¹ In this example, LIDB providers would be liable for fraud which they have no ability to reduce - directly contrary to the premise of the NPRM that the party best able to reduce fraud should bear the

¹⁹ MCI Comments at 14.

²⁰ See Comments of Sprint at 14, n.12 ("the LIDB alone cannot prevent all ABS-related fraud"). This is all the more obvious when one notes that the fact that a LIDB returns an "invalid" query does not indicate that fraud has occurred - it could merely indicate that the calling party entered their card number incorrectly.

²¹ See Comments of Puerto Rico Telephone Company at 6.

responsibility.²¹

Moreover, these proposals would assign the costs of fraudulent calls to entities which, at present, have no revenue stream which would cover the costs of indemnifying the IXC's. USIN agrees with Ameritech that the liability for calling card fraud belongs with the carrier that earns revenue from the call.²² As USIN noted in its initial comments, all interexchange carriers' tariffed rates are presently calculated based in part on estimated levels of fraud and uncollectibles.²³ LIDB query rates, on the other hand, do not include the costs of fraud.

To expand the LIDB provider's role to a guarantor of an IXC's charges on all calling card or alternate-billed calls would necessarily require some increase in the costs of LIDB services.²⁴ To the extent that these costs would eventually be borne by LIDB customers and passed on to IXC ratepayers, these proposals would not serve the public interest, as they would represent a double recovery for the IXC's whose rates already allow for fraud. Moreover, provision of O/T number already represents additional revenues for IXC's, obtained through reduced fraud.

²¹ See Separate Statement of Cmmr Andrew C. Barrett, at 1.

²² Comments of Ameritech at 7.

²³ USIN Comments at 6.

²⁴ See Comments of USTA at 5.

CONCLUSION

In order to best serve the goals of this proceeding, the Commission should refocus its efforts on facilitating industry cooperation, rather than fomenting industry debate regarding allocation of liability for fraud. Market forces will adequately provide for the efficient allocation of liability for the costs of toll fraud. Moreover, industry cooperation is essential to maintain confidentiality for toll fraud prevention mechanisms and to address toll fraud migration.

In this light, the Commission should find that the record clearly indicates that the provision of originating and terminating number information by LIDB customers will inure to the benefit of all service providers by enabling LIDB providers to develop additional mechanisms which will reduce the instance of toll fraud on the IXC's networks. However, even these advanced LIDB services cannot provide a foolproof guarantee that no fraud will reach the IXC's network, and therefore the Commission should reject proposals to require LIDB providers to guarantee IXCs recovery of their tariffed charges, especially since those charges already reflect the IXC's costs of fraud.

Respectfully submitted,

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Dated: February 10, 1994

Certificate of Service

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